Bryant & Stratton Business Institute *and* Local 2294, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO. Cases 3–CA–19749, 3–CA–19767, 3–CA–20132, and 3–CA–20132–2

April 8, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND HIGGINS

Upon charges filed by the Union on November 22, 1995, November 30, 1995, June 24, 1996, and July 29, 1996, the General Counsel of the National Labor Relations Board issued a consolidated complaint on October 23, 1996, against Bryant & Stratton Business Institute, the Respondent, alleging that it has violated the National Labor Relations Act.

The complaint alleges, inter alia, that the Respondent withdrew recognition from the Union on or about April 19, 1996, and failed and refused to provide the Union with information it requested on or about May 31, 1996. On November 5, 1996, the Respondent filed its answer admitting in part and denying in part the allegations of the complaint.

On December 4, 1996, the General Counsel filed a Motion for Partial Summary Judgment. On December 10, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

Ruling on Motion for Summary Judgment

In its answer, the Respondent admits that the Union was certified as the exclusive bargaining representative of the unit employees on about November 21, 1989, and that it withdrew recognition from the Union on April 19, 1996, and failed and refused to provide the Union with information that it requested on May 31, 1996. The Respondent's answer asserts that the withdrawal of recognition and failure to provide information were proper because it had received notices from a majority of unit employees stating that they no longer wished to be represented by the Union. However, on August 23, 1996, the Board issued its Decision and Order in *Bryant & Stratton Business Institute*, 321 NLRB 1007 (1996). In that decision, the Board found that the Respondent had committed numerous serious unfair labor practices, including failing to bargain in good faith from January 22, 1990, through March 12, 1991. The Board's decision provided, inter alia, for a 1-year extension of the Union's certification year to allow the Union a reasonable period of time for good-faith bargaining free from the influences of the unfair labor practices previously committed by the Respondent. Id. Accordingly, at all times material to this proceeding the Union enjoyed an irrebuttable presumption of majority status. *Straus Communications, Inc.*, 246 NLRB 846, 848 (1979), enfd. 625 F.2d 458 (2d Cir. 1980). Therefore, the Respondent's claim that the Union no longer represented a majority of unit employees has raised no issues warranting a hearing.

We further find that there are no factual issues regarding the Union's request for information inasmuch as the Respondent admits that it refused to furnish the information. Although the Respondent denies that the information is relevant and necessary to the Union's performance of its duties, the description of the information sought on its face relates directly to the terms and conditions of employment of the unit employees and we so find.[1] It is well settled that information concerning names, addresses, telephone numbers, as well as wages, hours worked, and other terms and conditions of employment of unit employees is presumptively relevant to the Union's role as exclusive collective-bargaining representative. See *Deadline Express*, 313 NLRB 1244 (1994), and cases cited therein. In any event, the Respondent did not contest the relevance of the requested information in its response to the show cause order. We, therefore, find that the Respondent has not, by its denial, raised any issue requiring a hearing with respect to the Union's request for information. Id.

In the absence of any material issues warranting a hearing, we grant the Motion for Partial Summary Judgment.[2]

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with offices and places of business in Buffalo, New York, has been engaged in the provision of education in business and technical subjects. During the 12 months preceding issuance of the complaint, the Respondent, in conducting its business operations, received gross revenues in excess of $1 million and purchased and received at its New York facilities goods and materials valued in excess of $50,000 directly from points outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7)

[1] The Union requested that the Respondent provide: (1) the spring 1996 schedule for full-time faculty and those reduced to part time, including courses, number of contract hours and course times, day or night and hourly rates; (2) a list of faculty not receiving a schedule and the reasons why; (3) faculty member Lynn Meyers' full name, address, telephone number, salary, and credentials; and (4) a list of all faculty hired since January 1995, including addresses, telephone numbers, salary, and credentials.

[2] The remaining allegations of the complaint (pars. 9 and 10), on which summary judgment is not sought, are remanded to the Regional Director for further appropriate action.

of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Unit and the Union's Representative Status*

The following employees of the Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All full-time faculty, including faculty who are subject area coordinators, employed by the Respondent at 40 North Street and 1028 Main Street, Buffalo, New York, 1214 Abbott Road, in Lackawanna, New York, and 200 Bryant & Stratton Way, Clarence, New York; excluding all part-time faculty, librarians and all other employees, guards and supervisors as defined in the Act.

Since about November 21, 1989, and at all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees. At all times since November 21, 1989, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

B. *The Withdrawal of Recognition*

On about April 19, 1996, the Respondent withdrew recognition from the Union based on its belief that the Union no longer represented a majority of employees in the unit. On August 23, 1996, the Board ordered the Respondent to bargain in good faith with the Union and extended the Union's certification year for 1 year.[3] It is undisputed that the Respondent has not complied with the Board's Order, and has not bargained with the Union since April 19, 1996. Accordingly, by withdrawing recognition the Respondent violated Section 8(a)(5) and (1) of the Act. *Straus Communications, Inc.*, supra, 246 NLRB at 848.

C. *The Refusal to Provide Requested Information*

Since May 31, 1996, the Union has requested the Respondent to furnish information which is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit, and the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By withdrawing recognition from the Union on April 19, 1996, the Respondent has violated Section 8(a)(5) and (1) of the Act.
2. By failing and refusing to provide the Union with requested information since May 31, 1996, the Respondent has violated Section 8(a)(5) and (1) of the Act.
3. These unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to recognize and bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement. We shall also order the Respondent to furnish the Union the information requested.

To ensure that the employees are accorded the service of their selected bargaining representative for the period provided by the law, we shall construe the initial period of the certification as beginning on the date the Respondent complies with this Order. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965); *Deadline Express*, supra, 313 NLRB at 1245.[4]

ORDER

The National Labor Relations Board orders that the Respondent, Bryant & Stratton Business Institute, Buffalo, New York, its officers, agents, successors, and assigns, shall take the following actions necessary to effectuate the policies of the Act.

1. Cease and desist from

(a) Refusing to bargain with Local 2294, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

(b) Failing or refusing to provide the Union with requested information that is necessary for and relevant to its role as exclusive bargaining representative of the unit.

[3] Although not expressly stated in the Board's Order, the 1-year extension does not begin until the date the Respondent begins complying with the Board's Order. See 321 NLRB 1007 fn. 5, 1010. *Outboard Marine Corp.*, 307 NLRB 1333, 1348 (1992), enfd. mem. 9 F.3d 113 (7th Cir. 1993). See also *Straus Communications, Inc.*, 246 NLRB at 847 (extension of certification year implicit in commitment to bargain in good faith).

[4] Alternatively, we reaffirm our prior Decision and Order and find that a 1-year extension of the Union's certification year from the date the Respondent begins compliance with this Order is necessary for the reasons stated therein. *Bryant & Stratton Business Institute*, 321 NLRB 1007 fn. 5 (1996). In this regard, the Respondent withdrew recognition without complying with the Board's prior Order and engaging in good-faith bargaining.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time faculty, including faculty who are subject area coordinators, employed by us at 40 North Street and 1028 Main Street, Buffalo, New York, 1214 Abbott Road, in Lackawanna, New York, and 200 Bryant & Stratton Way, Clarence, New York; excluding all part-time faculty, librarians and all other employees, guards and supervisors as defined in the Act.

(b) Treat the initial year of certification as beginning on the date the Respondent complies with this Order.

(c) On request, furnish the Union with information that is necessary for and relevant to its role as the exclusive bargaining representative of the unit employees.

(d) Within 14 days after service by the Region, post at its Downtown Buffalo, Eastern Hills, and Southtowns facilities copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 3, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed any of the facilities involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since November 22, 1995.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT refuse to bargain with Local 2294, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, AFL–CIO as the exclusive bargaining representative of the employees in the bargaining unit.

WE WILL NOT fail or refuse to provide the Union with requested information that is necessary for and relevant to its role as the exclusive bargaining representative of the unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All full-time faculty, including faculty who are subject area coordinators, employed by us at 40 North Street and 1028 Main Street, Buffalo, New York, 1214 Abbott Road, in Lackawanna, New York, and 200 Bryant & Stratton Way, Clarence, New York; excluding all part-time faculty, librarians and all other employees, guards and supervisors as defined in the Act.

WE WILL treat the initial year of union certification as beginning on the date we comply with the Board's Order.

WE WILL, on request, furnish the Union with information that is necessary for and relevant to its role as the exclusive bargaining representative of the unit employees.

BRYANT & STRATTON BUSINESS INSTITUTE